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George Ruppert

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190406

DATE: February 27, 1978

MATTER OF ABC Cleaning Service, Inc.

DIGEST:

1. Protest alleging that specifications were restrictive and that amendment did not extend bid opening date is untimely under Bid Protest Procedures when not filed before bid opening. Moreover, issues raised do not justify invoking exception to timeliness rules which permit consideration of untimely protests where issues are "significant" to procurement practices.
2. Whether award made while protest was pending was in violation of ASPR § 2-407.8(b)(3) (1976 ed.) is not for consideration where original protest was resolved by issuance of amendment, notwithstanding protester refused to withdraw protest, and subsequent protest on different grounds is untimely.

ABC Cleaning Services, Inc. (ABC), protests the award of a contract to the Trash Collection Company (TCC) under invitation for bids (IFB) No. DSA710-77-B-0027, issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio, for trash collection services during fiscal year 1978. Counsel for APC filed a protest with our Office on October 6, 1977, on the grounds that the specifications were restrictive and that an insufficient time was allowed to respond to the IFB. Counsel states that although the contracting officer issued a modification to the IFB to eliminate the restrictive specifications, which ABC had previously protested, his failure to extend the bid opening date beyond the original date resulted in the exclusion of bidders who did not have sufficient time to prepare bids and provided ABC only

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2 days to submit a bid. Under these circumstances, counsel requests that the award to TCC be set aside and the requirement readvertised.

The IFB required all bidders to furnish a front loading packer truck and compatible containers and rear hoisting trucks compatible with both Government-furnished drop-bottom containers and Government-furnished roll-on containers. By letter of September 6, 1977, to the procuring agency, ABC protested that the specifications were restrictive because there was no provision for the use of rear loaders. After consideration of the protest, amendment 0001 was issued on September 16, 1977, to permit the use of rear loading packer trucks. Therefore, the amendment eliminated the objection ABC had raised regarding the specification. Bid opening scheduled for September 23, 1977, in the original IFB remained unchanged.

Counsel states that ABC did not receive the amendment until September 21, 1977. ABC submitted its bid on time without stating any objection against the scheduled opening time. Of the two bids received, the low bid was submitted by TCC.

September 26, 1977, counsel for ABC orally advised the contracting agency that he was filing a protest with our Office because the amendment did not extend the time for the submission of bids. The contracting officer determined on September 27, 1977, that the service being procured was urgently required and that it was in the best interest of the Government to proceed with the award. September 28, 1977, TCC was notified that its offer was accepted with an effective date of October 1, 1977. ABC filed its protest with our Office on October 6, 1977.

The contracting officer contends that ABC's protest to our Office is untimely under the Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), which provides that "Protests based upon alleged improprieties in any type of solicitation which

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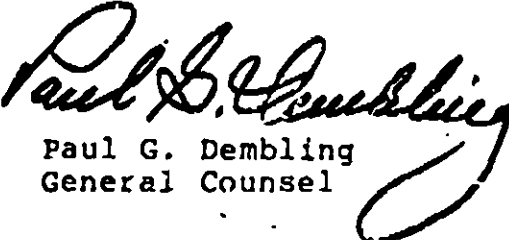
are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals." We agree. In accordance with the quoted provision, ABC was required to file any protest regarding the solicitation prior to the September 23 opening date. A protest in that respect filed after that time is untimely and will not be considered on the merits. See Deere & Company, B-189136 (1), June 28, 1977, 77-1 CPD 460. ACAS, Inc., B-186811, December 15, 1976, 76-2 CPD 493. Further, assuming assurances were given on September 12, 1977, that 10 days would be allowed between the issuance of an amendment and bid opening, such assurances were negated by the issuance of the amendment establishing the bid opening date, which amendment was received by ABC prior to bid opening and in sufficient time to allow it to complain to the contracting officer if the bidding period was insufficient.

Counsel for ABC contends that our Office could consider the protest, even if untimely, under the "significant issue exception" provided in 4 C.F.R. § 20.2(c) (1977). This section does permit consideration of untimely protests where issues significant to procurement practices or procedures are raised. However, the significant issue exception is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. See Catalytic, Incorporated, B-187444, November 23, 1976, 76-2 CPL 445. We see nothing in this case to warrant invoking this exception.

ABC contends that the award made to TCC while its protest was pending was in violation of Armed Services Procurement Regulation (ASPR) § 2-407.8(b) (3) (1976 ed.). However, the original protest was resolved by the issuance of the amendment, notwithstanding ABC refused to withdraw the protest, and since we will not determine whether there is merit in the subsequent ABC protest on different grounds

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because of its untimeliness, it is not apparent that ABC was prejudiced by the award and therefore whether the award was in violation of ASPR § 2-407.8 (b)(3) is not for consideration either.


Paul G. Dembling
General Counsel